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ITEL

Pullman

February 7, 1989

FEB 8 1989 11 20 AM

Istel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000
(415) 781-1035 Fax

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

9-039A042
Date 2-8-89
Fee \$ 13.00

Re: Amendment No. 4 to Lease Agreement dated as of July 18, 1977, between Istel Railcar Corporation, as successor in interest to United States Railway Leasing Company and assignee of Evans Railcar Corporation, and Occidental Barging Corporation (Lease attached)

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under the Assignment of Lease Agreement dated as of December 30, 1988, between Occidental Barging Corporation and Island Creek Corporation, which is being filed simultaneously this date.

The parties to the aforementioned instrument are listed below:

Istel Railcar Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Occidental Barging Corporation (Lessee)
c/o Island Creek Corporation
P.O. Box 12029
Lexington, Kentucky 40507

This Amendment adds ninety-four (94) open-top hoppers to an existing Lease Agreement dated August 1, 1978, between Lessor and Lessee, and terminates the subject Lease Agreement.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker
Patricia Schumacker
Legal Department

FEB 8 11 15 AM '89
MOTOR OPERATING UNIT

Lot 1519

16200 ^B

AMENDMENT NO. 4 TO LEASE AGREEMENT

FEB 8 1989 - 11 28 AM

INDESTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 4 (the "Amendment") to that certain Lease Agreement dated as of July 18, 1977 (the "Lease") between United States Railway Leasing Company ("United"), an Illinois corporation, and OCCIDENTAL BARGING CORPORATION ("Lessee"), a California corporation, is made as of this 30th day of December, 1988, by and between ITEL RAILCAR CORPORATION ("Lessor"), a Delaware corporation, as assignee of Evans Railcar Leasing Company, United's successor in interest, and Lessee.

R E C I T A L S:

- A. United and Lessee were parties to the Lease pursuant to which United leased to Lessee one hundred (100) open-top hopper railcars bearing reporting marks USLX 46000-46099 (the "Cars") as set forth on Exhibit A to the Lease.
- B. The six (6) Cars bearing the reporting marks USLX 46005, 46044, 46052, 46055, 46086 and 46093 have been destroyed and are no longer subject to the Lease.
- C. Through the letter dated November 4, 1988 (which served as the Third Amendment to the Lease), the term of the Lease has been extended to include the period from November 11, 1988 through and including the earlier of (1) ⁶ January 1st, 1989, or (2) the date that a new lease agreement is fully executed between Itel Railcar Corporation and Island Creek Corporation.
- D. Lessee desires to amend the existing Railroad Car Lease Agreement dated August 1, 1978, between United and Lessee (the "1978 Lease") to add the ninety-four (94) Cars that remain subject to the Lease in lieu of executing a new lease agreement between Itel Railcar Corporation and Island Creek Corporation.
- E. Lessor and Lessee desire to terminate the Lease.

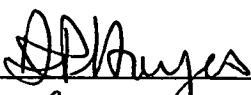
NOW, THEREFORE, the parties hereto agree as follows:

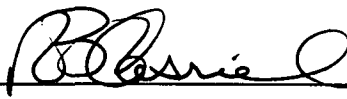
1. All terms defined in the Lease shall have the meanings defined therein when used in this Amendment, except that "United" ~~and Lessee~~, when used herein and in the Lease, shall mean Itel Railcar Corporation ("Lessor").

2. The second paragraph of Amendment No. 3 to the Lease shall be deleted and replaced by the following: "Itel Railcar Corporation, as assignee of United States Railway Leasing Company ("United"), hereby agrees to extend the terms of these Agreements with respect to the Cars effective on November 11, 1988, through and including the earlier of (1) January 16, 1989, or (2) the date that Amendment No. 2 to the Railroad Car Lease Agreement dated August 1, 1978, between United States Railway Leasing Company and Occidental Barging Corporation, is fully executed between Itel Railcar Corporation, as assignee of Evans Railcar Leasing Company, United's successor in interest, and Occidental Barging Corporation."
3. On the date that Amendment No. 2 to the 1978 Lease is fully executed, the Cars shall become subject to the terms and conditions of the 1978 Lease, as amended, and the Lease shall be deemed terminated.
4. Except as expressly modified by this Amendment, all terms and provisions of the Lease shall remain in full force and effect.
5. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

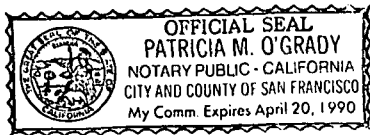
OCCIDENTAL BARGING CORPORATION

By: 
Title: President
Date: 1/10/89

By: 
Title: VICE PRESIDENT AND TREASURER
Date: 1/5/89

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

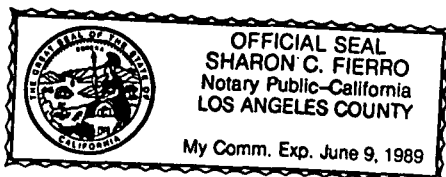
On this 10th day of January, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Amendment No. 4 to Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia M. O'Grady
Notary Public

STATE OF California)
) ss:
COUNTY OF Los Angeles)

On this 5th day of January, ¹⁹⁸⁹~~1988~~, before me personally appeared R.B. Casriel to me personally known, who being by me duly sworn says that such person is Vice President and Treasurer of Occidental Barging Corporation, that the foregoing Amendment No. 4 to Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Sharon C. Fierro
Notary Public

8/17/77 1519

LEASE

AGREEMENT made and entered into this 18th day of July, 19 77,
between

UNITED STATES RAILWAY LEASING COMPANY

an Illinois corporation (hereinafter called "United") and

Occidental Barging Corporation
a California Corporation
(hereinafter called "Lessee")

RECITALS

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. **Lease of Cars.** United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United the Cars (the term "Cars" and other terms used herein are defined in Paragraph 28 hereof). The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. The lease shall become effective as to any Car immediately upon its acceptance pursuant to Paragraph 3.

2. **Delivery of Cars.** United shall deliver the Cars as promptly as is reasonably possible, in one lot. United's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and United shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond United's control; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after October 31, 1977.
Initial delivery shall be f.o.t. to the point or points chosen by Lessee

From and after acceptance the Cars Lessee shall be liable for, and shall pay or reimburse United for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from car shops, storage or terminal facilities. Lessee shall be responsible for freight charges which may be incurred in delivering the Cars from Washington, Indiana to the f.o.t. point.

3. **Condition of Cars - Acceptance.** All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and/or specifications contained in Exhibit A; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within five (5) days after United shall give Lessee notice that ~~all Cars are ready for~~ delivery, Lessee may have its authorized representative inspect such Cars at ~~(the point of initial delivery)~~ (the manufacturer's plant)* and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease.

*Strike inapplicable material in Paragraph 3.

MICROFILMED

4. **Use and Possession.** Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car (a) on its own property or lines; or (b) upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in Canada.

5. **Term.** This Lease shall be for a term which shall commence on the date of delivery by United of all Cars as provided in Paragraph 2 hereof, and shall terminate ten (10) years from the Date of Delivery unless sooner terminated in accordance with the provisions of this Lease or unless extended pursuant to written agreement of the parties. See Rider 1.

6. **Rental.** (a) Per Car. During the term of this Lease, Lessee shall pay to United for each

~~(b) Adjustment. The rental provided in Paragraph 6(a) is comprised of a Constant Factor of \$ _____, plus an initial Maintenance Factor of \$ _____. If the Prevailing Labor Rate established and in effect upon the expiration of each month from and after the date hereof shall differ from the Current Labor Rate of \$ _____, the Maintenance Factor shall be adjusted to be the product obtained by multiplying the Maintenance Factor by a fraction, the numerator of which is the Prevailing Labor Rate and the denominator of which is the Current Labor Rate; and the per Car rental shall be revised to be the sum of the Constant Factor and the adjusted Maintenance Factor. Any such adjustment shall be instituted by notice from United to Lessee and shall take effect with respect to rents coming due next after the date of such notice; provided, however, that no adjustment shall be made which would reduce the Maintenance Factor below the initial Maintenance Factor. Notwithstanding the foregoing, if Lessee shall be served with a notice increasing the rents thereafter payable hereunder, Lessee may, in lieu of paying such increased rents, elect by notice delivered to United within ten days after receipt of United's notice, to itself perform or cause to be performed all Repair Work to Cars required of the parties by Paragraph 9(a) and (b) hereof, and, upon such election, the rents thereafter payable per Car shall be and remain only the amount of the Constant Factor; and Lessee shall be obligated, at its own expense, to perform, or cause to be performed, all such Repair Work, and United shall be released from and indemnified against all responsibility, cost and expense therefor.~~

(b) Mileage Credits. If pursuant to Exhibit A the Cars bear United's reporting marks and numbers, any mileage payments paid or allowed by railroads on the Cars shall be the property of United, but United shall credit mileage payments actually received by it during an Accounting Period (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this Lease during such Accounting Period; provided, however, that during the term of this Lease the total of such credits shall not exceed the total rental payable by Lessee and any credit unused at the end of each Accounting Period or unused at the expiration or termination of this Lease shall be cancelled. Lessee shall so use the Cars that their mileage under load shall be not less than their mileage empty upon each railroad (not having a published exemption therefor in its tariff) over which the Cars shall move, including movement to place of delivery to Lessee hereunder and movement to United upon termination or expiration of this Lease, provided, however, that this undertaking shall not apply to the movement of Cars over Lessee's own lines. Upon notice from any railroad, whether received prior to or after termination of this Lease, Lessee shall pay United as additional rental all sums due on account of all excess empty mileage incurred on Cars at the rate established by the applicable railroad tariff.

7. **Payment.** Lessee shall make payment of all sums due hereunder to United at the address provided in Paragraph 21 hereof, or such other place as United may direct. Rental payments shall be made monthly in advance on or before the 1st day of each month for which such rental is due, except that the first full month's payment shall include rental covering any prior period of less than one month.

8. **Title.** Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. **Repairs.** (a) United. ~~Except as may otherwise be provided in Paragraph 8(b) or this Paragraph 9(a) and (b),~~ United shall be responsible for all Repair Work. Lessee shall promptly notify United of any Repair Work of which it has knowledge. United shall have no responsibility hereunder until and unless informed of the need for Repair Work. United may require Lessee to deliver Cars to such place as United designates for all Repair Work or work United elects to effect for preventive measures, and United may terminate this Lease with respect to any Car as to which it deems Repair Work to be unsuitable or uneconomical.

(b) Lessee. Lessee shall be responsible for and shall pay all costs and expenses of all Repair Work, ~~or other work or materials required by reason of (i) damage or other condition caused by negligence of Lessee or anyone other than United, (ii) damage or other condition caused by loading, unloading or use other than as permitted herein, (iii) loss of or damage to interior lading equipment, special interior linings or removable parts or which Repair Work or other work or materials is necessary in order to maintain same in good, safe operating condition, or (iv) Interchange Rules which have not been adopted or promulgated as of the date hereof.~~ See Rider 1.

10. **Substitution of Cars.** United may, at any time and from time to time, replace any Withdrawn Cars or Casualty Cars with Replacement Cars, ~~and such Replacement Cars shall be~~ subject to acceptance by the pertinent railroads. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Withdrawn or Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which United has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

11. **Abatement of Rent.** Rental payments on any Car out of service for Repair Work or other work referred to in Paragraph 9(a) hereof shall abate from the fifth day after such Car has been placed in any railroad or car shop for service until such Car or a Replacement Car is delivered to Lessee, to a railroad for the account of Lessee, or is otherwise ready for or is returned to service by Lessee. In the event rental is abated, then if United so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the original term of this Lease, as determined in Paragraph 5, shall be extended for a period of time (but not less than one day) determined by dividing the sum of the number days per Car with respect to which rental was so abated by the number of Cars subject to this Lease on what would otherwise have been the last day of the original Term hereof.

12. **Taxes.** United shall be liable for and pay all Federal, State or other governmental property taxes assessed or levied against the Cars. Lessee shall be liable for and shall pay and reimburse any payment of (i) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars, this Lease, or the manufacture, acquisition, or use of the Cars for or under this Lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

13. **Liens.** Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect United's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process, provided, however, that Lessee shall not be required to keep the Cars free from or discharge statutory liens arising without any action being taken on the part of the lien holder, such as liens in favor of landowners for royalty payments, employees' liens, unemployment compensation liens, and tax liens and mechanic's and materialman's liens.

14. **Indemnities - Patent Covenants.** Lessee agrees to indemnify United and hold it harmless from any loss, expense or liability which United may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises from United's negligence. United agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "United" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14. Lessee's indemnity shall not eliminate any rights which Lessee may have under any manufacturer's warranty assigned to it pursuant to Paragraph 22. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. **Lettering - Inventory.** Except for renewal and maintenance of lettering indicating the rights of United or any assignee of United or that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of United. United may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of United, but no more than once every year, furnish to United its certified inventory of all Cars then covered by this Lease.

16. **Loss, Theft or Destruction of Cars.** In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, by notice, promptly and fully advise United of such occurrence. Except where United shall have received payment for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, ~~within 45 days after demand by United, promptly~~ make payment to United in the same amount as is prescribed in the Interchange Rules for the loss of such Car. This Lease shall terminate with respect to a Casualty Car on the date United shall receive notice of a casualty occurrence with respect thereto, and thereafter Lessee shall have no further liability to United hereunder with respect thereto excepting liabilities arising or existing under Paragraphs 6(c), 12, 13, and 14 hereof and the liability, if any, of Lessee to make payments pursuant to this Paragraph. delivered to
United for
repair work

17. **Return of Cars.** Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to United by delivering same to United at such car shop, storage or terminal facility as it may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, and shall be in need of no repairs for which Lessee is liable under Paragraph 9. Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred.

18. **Default.** If Lessee shall fail to make any payment required hereunder within 20 days after same shall have become due or shall default or fail for a period of 20 days ^{after receipt of} ~~in the due observance of~~ written notice from United performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may at its election terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date or may without terminating the Lease repossess the Cars, but in the event the Cars are delivered to United or are repossessed, United shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. ~~Lessee shall not assert, in mitigation of its damages or otherwise, any lack of diligence by United in or related to the procuring of another lessee or in refusing to accept any proposed or prospective lessee or other transaction, such matters being within United's sole discretion and determination.~~ The election by United to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

19. **Sublease and Assignment.** The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of United; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease; ~~Lessee shall have the right to assign the lease or sublease the cars to wholly owned subsidiaries which is not a railroad provided such assignment or sublease will not relieve the Lessee from any liability or undertaking hereunder.~~

(b) all rights of United hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by United. If United shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

Lessee's parent,
Occidental
Petroleum
Corporation or
any of its

The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. **Opinion of Counsel.** Upon the request of United or its assignee at any time or times, Lessee will deliver to United a favorable opinion of counsel for Lessee, addressed to United or its assignee in form and substance satisfactory to counsel for United or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power to and has taken all corporate action necessary validly to enter into this Lease and carry out its obligations thereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, ~~except those permitted hereunder~~ charge or encumbrance in favor of anyone claiming by, through or under Lessee; and ~~all of the Cars were, upon delivery to Lessee, in condition satisfactory to Lessee and were accepted by Lessee in accordance with the terms of this Lease;~~

~~(d) neither Lessee nor its counsel know of any requirement for recording, filing or depositing of this Lease, other than with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of United or its assignee in the United States of America, and~~

(e) no governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part thereunder.

21. **Notice.** Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

United at: 2200 East Devon Avenue
Des Plaines, Illinois 60018

P. O. Box 11430

Lessee at: _____

Lexington, Kentucky 40511

or at such other address as either party may from time to time designate by such notice in writing to the other.

22. **Warranty — Representations.** United makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in Exhibit A, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. Lessee represents that all of the matters set forth in Paragraph 20(a) through and including (e) shall be and are true and correct at all times that any Car is subject to this Lease.

23. **Governing Law — Writing.** The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. **Counterparts.** This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. **Severability — Waiver.** If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this

Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. *Terminology.* In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. *Past Due Payments.* Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to ten per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time during which overdue and unpaid.

28. *Definitions.* For all purposes of this Lease the following terms shall have the following meaning:

(a) "Cars" — railroad cars of the type, construction and such other description as is set forth in Exhibit A.

(b) "Interchange Rules" — all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the American Association of Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(c) ~~"Average Date of Delivery" — that date which is determined by (i) multiplying the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car hereunder, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car.~~ The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate of Inspection and Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

(d) "Accounting Period" — each consecutive period of 12 month commencing with the date hereof and any period of less than 12 month during which period this lease shall expire or terminate.

(e) "Prevailing Labor Rate" — the per hour general labor rate established by the Association of American Railroads.

(f) "Repair Work" — all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules.

(g) "Withdrawn Cars" — Cars as to which this Lease has been terminated by United because deemed by United to be unsuitable or uneconomical for Repair Work.

(h) "Casualty Cars" — Cars which are lost, stolen, destroyed or damaged beyond economic repair.

(i) "Replacement Cars" — Cars of substantially similar description and specifications to that set forth in Exhibit A which are substituted for Withdrawn or Casualty Cars.

29. **Benefit.** Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of United, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

30. **Recording.** Upon request by United, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under Section 20c of the Interstate Commerce Act or such other recordation as United deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, United and Lessee have duly executed this Lease as of the day and year first above written.

UNITED STATES RAILWAY LEASING COMPANY
an Illinois corporation

By Ralph E. Bell
Vice President

[SEAL]

ATTEST:

Frederic B. Long
Asst. Secretary

Acidental Barging Corporation
a(n) California corporation

By Fred J. Gumbert
Vice President
Assistant Treasurer

[SEAL]

ATTEST:

Sheldon M. Palmer
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK

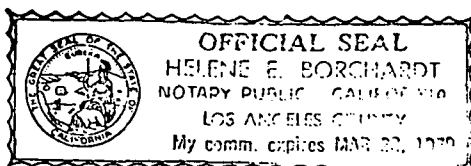
} ss

On this.....day of, 19....., before me personally appeared.....
to me personally known, who being by me duly sworn says that he is.....President of the
United States Railway Leasing Company, and....., to me personally
known to be the.....Secretary of said corporation, that the seal affixed
to the foregoing instrument is the corporate seal of said corporation, that said instrument was
signed and sealed on behalf of said corporation by authority of its Board of Directors, and they
acknowledged that the execution of the foregoing instrument was the free act and deed of said
corporation.

.....
Notary Public

CALIFORNIA
STATE OF ~~KENTUCKY~~ ^{LOS}
COUNTY OF ~~FAYETTE~~ ^{ANGELES} } ss

On this 18th day of July, 1977, before me personally
appeared FRED J. GRIVERTY
to me personally known, who being by me duly sworn, says that he is ASSISTANT TREASURER
~~President of~~ OCCIDENTAL BARGING CORPORATION
and SHELDON M. EISNER
to me personally known to be the ASSISTANT Secretary of said corporation, that the
seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instru-
ment was signed and sealed on behalf of said corporation by authority of its Board of Directors,
and they acknowledged that the execution of the foregoing instrument was the free act and deed
of said corporation.



10889 Wilshire Blvd., Los Angeles, CA 90024

Helene E. Borchardt
Notary Public

EXHIBIT "A"

Lease dated July 18, 1977, by and between United States Railway Leasing Company, ("United") and Acidental Barging Corporation ("Lessee")

TYPE AND DESCRIPTION OF CAR:

NEW, 100-ton, 3600 cu. ft. Four Pocket Open Top Hopper Car

NUMBER OF CARS:

One Hundred (100)

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

None

PERMITTED LADING USE:

Coal, or other Bulk, non-corrosive Commodities

*REPORTING NUMBERS AND MARKS:

USLX 46000 - 46099, inclusive

SPECIFICATIONS DESIGNATED BY LESSEE:

Cars are to be Newly Constructed

*When United's reporting marks are specified, this lease is subject to the granting of all necessary consents to such use by carrier or any other approval now or hereafter required by tariff, Interchange Rules or other applicable laws and regulations. At United's election all Cars may be marked with United's name designating it as Lessor or Owner and may bear the following inscription: "Title to this Car subject to documents recorded under Section 20c of Interstate Commerce Act."

EXHIBIT B

Lease dated July 18, 19 77, by and between United States Railway Leasing Company ("United") and Occidental Barging Corporation "Lessee")

CERTIFICATE OF INSPECTION AND ACCEPTANCE

_____, 19____

United States Railway Leasing Company
2200 East Devon Avenue
Des Plaines, Illinois 60018

Gentlemen:

The undersigned, being a duly authorized inspector for Lessee, hereby certifies that he has made an inspection of _____ (_____) Cars bearing numbers as follows:

or has, on behalf of Lessee, elected to forego such inspection all as provided in the Lease, and hereby accepts such Cars for the Lessee pursuant to the Lease; that each of said Cars is plainly marked in stencil on both sides of each Car with the words

UNITED STATES RAILWAY LEASING COMPANY
OWNER AND LESSOR

Title to this Car subject to documents recorded
under Section 20c of Interstate Commerce Act

in readily visible letters not less than three-quarters inch (3/4") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee.

Lessee

RIDER 1.

Rider consisting of ~~one~~ (1)..... page attached to and made a part of Lease dated ...July...18... 1977... by and between United States Railway Leasing Company ("United") and ~~Acidental Barging Corporation~~ ("Lessee").

1. For all Repair Work performed at United's facilities, Lessee shall reimburse United in an amount equal to the cost of materials used in such repair work plus 15% thereof and for labor at the Prevailing Labor Rate. For Repair Work performed at facilities other than United's, Lessee shall reimburse United at the actual cost to United of such Repair Work. Lessee agrees to pay the amounts due pursuant to this Paragraph within ten (10) days after receipt of ^{itemized} invoice from United.*
2. Lessee shall have the unilateral right and option to terminate this Lease at the end of the first year of the lease term upon at least sixty (60) days' written notice to United of its intention to terminate.
3. The rental rate provided in Paragraph 6(a) includes an estimated personal property tax factor based on the use of the Cars in Kentucky, Maryland, North Carolina, Virginia, West Virginia and Ohio. At the expiration of each year from the ~~Average~~ Date of Delivery, United shall advise Lessee as to United's calculation of the difference between the estimated personal property tax and the actual personal property tax incurred, if any, during the preceding year on the Cars. Such calculation will be based upon either changes in the personal property tax rate applicable to railroad cars in the referenced states or use of the Cars by Lessee outside of the referenced states. After United so notifies Lessee, United and Lessee will negotiate an appropriate adjustment of the rental rate to take account of any such difference.
4. This Lease is expressly subject to and conditioned upon the subsequent filing by United of Form OT-5 regarding the subject Cars with the Association of American Railroads and the approval and acceptance of the Cars by the Chessie System or Norfolk & Western Railway Co. for use at Lessee's coal mines served by said railroads.

Acidental Barging Corporation

UNITED STATES RAILWAY LEASING COMPANY

By [Signature]
Title: Assistant Treasurer

By [Signature]
Title: Vice President-Sales

*Lessee shall have the right to audit United's books and records to determine the accuracy and reasonableness of the charges for said Repair Work and to refuse to pay any charges invoiced to Lessee which, pursuant to said audit, it feels to be unreasonable, exorbitant, inaccurate or unnecessary, until such time as a final determination of the proper charges for said Repair Work is made by the parties, subject to the provisions of the Letter Agreement attached hereto as Annex 1 and made a part hereof.

July 18, 1977

Re: July 18, 1977 Lease Agreement for 100
Open Top Hopper Cars

Gentlemen:

This letter will confirm our agreement with respect to the performance of certain repairs to the referenced railroad cars (the "Cars").

It is understood that United States Railway Leasing Company ("United") is responsible for the performance of all Repair Work to the Cars, while Occidental Barging Corporation ("Lessee") agrees to reimburse United for said Repair Work in accordance with Rider 1 to the referenced Lease.

United hereby agrees to advise Lessee of its estimate of the cost to Lessee of any individual occurrence of Repair Work which is in excess of \$500 per Car, except for running repairs performed by a railroad. United will also advise Lessee of the estimated cost to Lessee of programmed Repair Work scheduled for the Cars irrespective of the cost per Car. United may give Lessee oral advice of the above provided that it be confirmed in writing within five days. Such advice shall be deemed sufficient if given to any responsible person in Lessee's Transportation Department.

Lessee shall have the right to notify United within three days of receiving such advice that Lessee does not want the Repair Work to be performed by United. If Lessee so notifies United, Lessee shall also advise United where the Car or Cars should be delivered for such Repair Work. Such notification and advice may be oral, provided that it be confirmed in writing within five days. Lessee shall give such notice to the representative of United who advised Lessee regarding such Repair Work.

If Lessee so notifies United that United is not to perform Repair Work, it is agreed that rental payments on the Cars in need of Repair Work will not abate until the fifth day after the Car is delivered to the repair facility designated by Lessee.

If the foregoing is acceptable to you, please sign and return the enclosed copy.

Very truly yours,

UNITED STATES RAILWAY LEASING COMPANY

By Ralph E. Bell
Vice President

Accepted & Agreed

Occidental Barging Corporation

By Fred J. Guback
Title: Assistant Treasurer
Date: 18th July, 1977

AMENDMENT NO. 1 TO LEASE

AMENDMENT NO. 1 TO LEASE made and entered into this 1st day of August, 1978 between United States Railway Leasing Company ("United") and Occidental Barging Corporation ("Lessee").

WITNESSETH:

WHEREAS, United and Lessee entered into a Lease dated July 18, 1977 (the "Lease") providing for the lease of 100 open top hopper cars (the "Cars") from United to Lessee;

WHEREAS, United and Lessee wish to amend the Lease in accordance with the terms hereof


NOW, THEREFORE, United and Lessee agree as follows:

1. Lessee shall have the unilateral right and option to terminate the Lease on September 25, 1979 upon written notice to United of its intention to terminate which notice shall be delivered not later than July 27, 1979.
2. Notwithstanding anything contained in Section 19(a) of the Lease, Lessee shall have the right to sublease the Cars to its customers without the consent of United provided that Lessee shall not be relieved of any of its obligations under the Lease as a result of such subleasing.
3. All provisions of the Lease not otherwise amended herein shall remain in full force and effect.

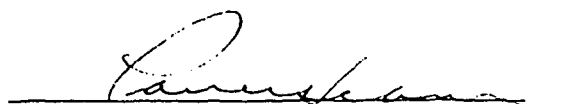
ATTEST:


Assistant Secretary


UNITED STATES RAILWAY LEASING COMPANY

By 
Title:

ATTEST:


Secretary

OCCIDENTAL BARGING CORPORATION

By 
Title: Assistant Treasurer

MICROFILMED

SECOND AMENDMENT DATED AUGUST 27, 1987

SECOND AMENDMENT dated as of August 27, 1987, to Exhibit A dated July 18, 1977, ("Exhibit A") of that certain Railroad Car Lease Agreement dated July 18, 1977, ("Lease") by and between EVANS RAILCAR LEASING COMPANY, as Lessor ("Evans") and OCCIDENTAL BARGING CORPORATION, as Lessee ("Occidental").

W I T N E S S E T H:

WHEREAS, pursuant to the Lease and Exhibit A, Occidental currently leases ninety-four (94) marked and numbered USLX 46000-46004; 46006-46043; 46045-46051; 46053; 46054; 46056-46085; 46087-46092; 46094-46099 100-ton 3600 c.f. four pocket open top hopper cars; six (6) cars marked and numbered USLX 46005; 46044; 46052; 46055; 46086; 46093; having since been lost, stolen or destroyed ("Cars") from Evans; and

WHEREAS, all parties hereto desire to amend Exhibit A as hereinafter indicated:

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The term of the Lease shall be extended until November 11, 1988.
2. Except to the extent hereby or heretofore modified or amended, the terms and conditions of Exhibit A and of the Lease shall remain unchanged.

IN WITNESS WHEREOF, Evans and Occidental have entered into this Second Amendment this 27th day of August, 1987.

ATTEST:

OCCIDENTAL BARGING CORPORATION

By: _____

Secretary

By: _____

Assistant Treasurer

ATTEST:

EVANS RAILCAR LEASING COMPANY

By: _____

Laurence P. Prange
Assistant Secretary

By: _____

William M. Sheehan
Vice President Marketing

ITEL

IteI Railcar Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

November 4, 1988

Mr. Ronald E. Boling
Manager-Transportation
Island Creek Corporation
2355 Harrodsburg Road
Lexington, Kentucky 40504

- RE: 1) The Lease Agreement dated July 18, 1977, as amended,
between United States Railway Leasing Company and
Occidental Barging Corporation ("Lessee")
- 2) The Railroad Car Lease Agreement dated August 1, 1978,
between United States Railway Leasing Company and
Occidental Barging Corporation ("Lessee")

Dear Mr. Boling:

The above agreements are expiring on November 11, 1988 with respect to two hundred three (203) open top hoppers (the "Cars"). *

IteI Railcar Corporation, as assignee of United States Railway Leasing Company, hereby agrees to extend the terms of these agreements with respect to the Cars effective on November 11, 1988, through and including the earlier of (1) January 11, 1989, or (2) the date that a new lease agreement is fully executed between IteI Railcar Corporation and Island Creek Corporation, as ~~Lessee's successor in interest~~. All other terms and provisions of the agreements shall remain the same. ① *[Signature]*
⑥ *[Signature]*

Please indicate your concurrence hereto by signing both enclosed originals and returning one to me.

Sincerely,



Desmond P. Hayes
President

Concurrence by:

OCCIDENTAL BARGING CORPORATION

By: 

Title: Assistant Treasurer

Date: November 10, 1988

DPH:ml.053

*This letter constitutes the Third Amendment and First Amendment to the Lease Agreements referred to as 1) and 2) above, respectively.